IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 168 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
NAVJIVAN KELAVANI MANDAL - Defendant(s)

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Appearance :
MR LR PUJARI, AGP for Appellant
NOTICE SERVED for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/12/2006

ORAL JUDGMENT

1. Shri L.R. Pujari, learned AGP for the State, none for the respondent though the office report shows that the respondent is served.

2. The respondent-plaintiff filed Regular Civil Suit No. 189 of 1992 claiming rent at the rate of Rs. 3000/- per month for the period of 19 months totaling to Rs. 57,000/- on the ground that the appellant/defendant was a tenant in the premises and was liable to pay sum of Rs. 3000/- per month.

3. In response to the suit of the plaintiff, the defendant filed their written statement and contended inter alia that on 1.4.80, the date on which the defendant entered in the premises as tenant, it was agreed between the parties that the rent fixed by the Executive Engineer shall be agreed rent. They also submitted that on 1.5.81, the said Executive Engineer had declared rent to be Rs. 521/-, according to them, in view of the writing of the plaintiff, it would only be entitled to Rs. 521/- per month and not Rs. 3000/- per month.

4. The learned trial court dismissed the suit, but on appeal, the appellate court held that simply on such agreement rent could not be held to be Rs. 521/-,it also observed that the earlier

tenant was paying rent of Rs. 3500/- per month, therefore, the plaintiff's demand was reasonable, it accordingly allowed the appeal and decreed the suit.

5. The appeal has been admitted for hearing the parties on the following substantial question of law:-

> “Could the lower appellate court have exercised its jurisdiction under the Bombay Rents and Lodging House Rates Control Act, 1947 when an appeal to it was preferred under section 96 of the Code of Civil Procedure?”

6. The question, in fact, would mean that if the trial court had held that the standard/contractual rent would be Rs.521/-, the appellate court would have no jurisdiction to hold that the standard rent would be Rs.3000/- per month.

7. Shri L.R. Pujari, leaned AGP for the State submits that from exhs. 53 and 54, agreement

dated 1.4.80 and the order passed by the Executive Engineer on 1.5.81, it would be clear that the rent was Rs.521/- per month.

8. I have gone through the statements of the plaintiff's witness namely Dineshchandra Bhanuprasad Pandya. He had clearly stated before the trial court that but for his submission that the standard rent or contractual rent was Rs.3000/- he had no other document in support of his case.

9. From exh. 53, which is undisputed document, it clearly appears that the plaintiff had agreed that he would accept the rent as fixed by the Executive Engineer. Undisputely, the Executive Engineer, by his letter dated 1.5.81 held that the rent would be Rs. 521/- only. The plaintiff, through his witnesses has not submitted before the Court that why exhs. 53 and 54 are not binding upon him.

10. The learned first appellate court has not appreciated the said two documents in their true perspective and erred in holding that the standard rent would be Rs.3000/- per month.

11. In the present matter, the dispute was not that what would be the standard rent, the dispute was that what was the contractual rent. The plaintiff on one side was asserting that he was entitled to Rs.3000/- per month, the other side was submitting that Rs.521/- would be contractual rent in view of the agreement between the parties. The plaintiff but for *ipsi dixit* has nothing else in his favour, while the defendant has proof of the fact.

12. The learned first appellate court ignored all this material evidence for sake of nothing. The findings recorded by the learned first appellate court are in oblivion of the evidence available on the records. The findings must be termed to be perverse and should not be allowed to stand.

13. The appeal is allowed. The findings recorded by the learned first appellate court are set aside and the decree passed by the learned trial court is restored. No costs.

14. Let a decree be framed accordingly.

[R.S. GARG, J.]

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